

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



MIKE COX
ATTORNEY GENERAL

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October 1, 2009

Corbin R. Davis
Clerk of the Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

Re: ADM File No. 2009-11

Dear Mr. Davis:

I write to express my opposition to the amendatory language to MCR 6.302(C)(1) proposed in ADM File No. 2009-11, which seeks to compel all plea negotiations to take place on the record in open court.

Plea negotiations between a prosecutor and a defense attorney are more of a process than an event. They often involve back-and-forth discussions during out-of-court meetings, telephone calls, or other contacts. Contemporaneous with, or following such negotiations, the defense attorney will discuss these plea negotiations with the client. Because such conversations are done privately, the attorney can be candid in his or her appraisal of the case and recommendation as to whether an offer should be accepted. If "all discussions" concerning a plea offer were done on the record, there would be a chilling effect on an attorney's ability to fully and candidly advise the client. The *process* of negotiation is a fundamental part of our adversary system.

Under current practice, a defendant may request a preliminary evaluation of the sentence that would be imposed if he or she tenders a guilty plea. The trial court now has the discretion to decide whether such an evaluation between attorneys is done in open court or in chambers. The amendatory language would strip judges of such discretion, and would require all such proceedings to be held on the record in open court.

While transparency in government should be supported, there are times when the over-all public good is best served by a degree of confidentiality. No one could seriously propose that jury deliberations occur on the record and in open court, as we accept the need for privacy in discussions among the jurors. We already recognize the need to shield some information relevant to sentencing from public disclosure, as pre-sentence investigation reports remain confidential.

Furthermore, under current practice, a trial court must question a defendant, the prosecutor, and the defense attorney to ensure that there were no threats or promises beyond those stated in any plea agreement. Prohibiting all out-of-court discussions (by any persons) regarding a plea would not provide significantly more protection against an involuntary plea than the current rules already provide.

For these reasons, I ask that the Court not adopt the court rule amendments set out in ADM 2009-11.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mike Cox", written in a cursive style.

MIKE COX
Attorney General